## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION

IN RE AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION	) Case No. 2:18-mn-2873-RMG ) )
CITY OF STUART, FLORIDA,	) ) STIPULATION CONCERNING ) NATIONAL FOAM, INC.'S
Plaintiff,	) GOVERNMENT/MILITARY ) CONTRACTOR DEFENSE
V.	) This Document Relates to
3M COMPANY, et al.,	) Case No. 2:18-cv-3487-RMG
Defendants.	) )

WHEREAS, on October 18, 2018, Plaintiff City of Stuart, Florida ("Plaintiff") initiated this action, *Stuart* v. *3M Company et al.*, No. 18-cv-3487 (D.S.C.) (the "Action"), by filing a Complaint alleging, inter alia, various products-liability claims against multiple parties, including Defendant National Foam, Inc. ("National Foam") (ECF No. 1);

WHEREAS, on October 3, 2019, Plaintiff filed an Amended Complaint (ECF No. 35) and, on September 25, 2020, Plaintiff filed a Second Amended Complaint (ECF No. 54);

WHEREAS, on April 12, 2021, National Foam filed an Answer to Plaintiff's Second Amended Complaint ("Answer") in which it asserted that "[t]he Complaint and each alleged claim contained therein, is barred, in whole or in part, because Defendants are entitled to immunity from suit under the government contractor defense" (ECF No. 93 at 40);

WHEREAS, Plaintiff does not contend that it purchased or used any AFFF products that were designed, distributed, manufactured and/or sold by National Foam that were manufactured in compliance with the U.S. Department of Defense military specifications ("MilSpec") for use by government entities;

WHEREAS, Plaintiff contends that the only AFFF product that was designed, distributed, manufactured and/or sold by National Foam that caused damage to Plaintiff is Universal Gold;

WHEREAS, Universal Gold was not manufactured or sold as a MilSpec AFFF product;

WHEREAS, Plaintiff has requested that National Foam withdraw its government-contractor affirmative defense in the Action on the basis that Universal Gold is not MilSpec AFFF;

WHEREAS, the parties have met and conferred and, in order to provide for the efficient adjudication of the case, have agreed to the terms as set out below;

## NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED that:

- 1. Plaintiff agrees that it shall not advance any claims against National Foam in the Action related to any products other than Universal Gold.
- 2. In reliance on Plaintiff's representation in paragraph 1, National Foam agrees to withdraw affirmative defense number 7 from its Answer in this Action, which claims that National Foam is entitled to immunity from suit under the government/military contractor defense.

Dated: January 31, 2023

/s/ Gary Douglas
Gary J. Douglas
Rebecca G. Newman
Tate J. Kunkle
DOUGLAS AND LONDON PC
59 Maiden Lane, 6th Floor
New York, NY 10038
212-566-7500
Fax: 212-566-7501
gdouglas@douglasandlondon.com
rnewman@douglasandlondon.com
tkunkle@douglasandlondon.com

Nancy M. Christensen Robin L. Greenwald WEITZ & LUXENBERG PC 700 Broadway New York, NY 10003 Telephone: (212) 485-1897 Facsimile: (646) 293-7966 nchristensen@weitzlux.com rgreenwald@weitzlux.com /s/ Keith E. Smith
Keith E. Smith
Greenberg Traurig LLP
1717 Arch Street, Suite 400
Philadelphia, PA 19103
smithkei@gtlaw.com
215.988.7843

Attorneys for Defendant, National Foam, Inc.

Wesley A. Bowden LEVIN PAPANTONIO RAFFERTY 316 S Baylen Street Suite 600 Pensacola, FL 32502 Telephone: (850) 435-7186 Facsimile: (850) 436-6186 wbowden@levinlaw.com

Fred Thompson III MOTLEY RICE LLC 28 Bridgeside Boulevard Mt Pleasant, SC 29464 Telephone: (843) 216-9000 Facsimile: (843) 216-9440 fthompson@motleyrice.com

Frank Michael Petosa MORGAN AND MORGAN 8151 Peters Road Suite 4000 Plantation, FL 33324 Telephone: (954) 318-0268 Facsimile: (954) 333-3515 fpetosa@forthepeople.com

Attorneys for Plaintiff

2:18-mn-02873-RMG Date Filed 01/31/23 Entry Number 2827 Page 4 of 4

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was electronically filed with this Court's CM/ECF system on January 31, 2023 and was therefore served automatically on all counsel of record in this matter.

/s/ Keith E. Smith